

11 February 1977

MEMORANDUM

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FROM: *W*
Assistant to the Deputy Director

SUBJECT: CIA Relationships with Academe

The attached paper, "The CIA in Academia" by Professor Gordon B. Baldwin of the University of Wisconsin College of Law is submitted as an addendum to the Inspector General's memorandum of 9 February on the subject.

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DEPARTMENT OF STATE

Washington, D.C. 20520

76-8150

June 7, 1976

REVIEW STAFF

76-0455

Mr. Ben Evans
Executive Secretary
Central Intelligence Agency
Washington, D.C. 20505

Dear Mr. Evans,

I enclose herewith a copy of the AAUP Conference Newsletter which contains, I believe, the letter of May 24 from Van Alstyne to Bush. It is hard for me to determine what parts of the Newsletter are actual quotes because the Association seems to be sparing in its use of quotation marks.

I also enclose a draft of remarks that I may make at the National AAUP Meeting. Because I am unclear as to the precise format of the "panel discussion," it is unlikely that I would be able to deliver all nineteen pages, but I may offer these comments for publication with appropriate academic footnotes, etc., and possible revision in the AAUP Bulletin. I would, of course, be grateful for any of your comments.

Sincerely,

Gordon B. Baldwin
Counselor on International Law

Professor of Law
University of Wisconsin

Enclosures:
As stated.

National Meeting of AAUP .

Santa Barbara, California

June ~~29~~, 1976

THE CIA IN ACADEMIA

Gordon B. Baldwin

Professor of Law
University of Wisconsin*

* In obedience to the injunction about disclosing sponsors, if any, I covenant that there are none and that I am only a Professor of Law. For a one-year period just preceding the A.A.U.P. convention I served in the Department of State as Counselor on International Law. The thoughts expressed here, however, represent my views and not necessarily those of the Department of State, or of any other Government Agency.

An old story illustrates the differences among a lawyer, a philosopher, and a theologian. A philosopher is like a blind man in a dark cellar at midnight looking for a black cat that isn't there. He's distinguished from a theologian in that the theologian finds the cat. A lawyer, however, will smuggle a cat in under his overcoat and emerge to produce the animal in triumph.

If the "black cat" symbolizes CIA wrongdoing on campus, then, I believe, the Church Committee report reveals the character of all three professions.* First, the Committee stressed what is neglected here -- that foreign intelligence gathering is vital and that in the majority of CIA's relations with academics there is no cat. Agency inquiries relating to a subject's professional competence should be encouraged, are desirable, -- the Committee

* S.Rept. 94-755, Foreign and Military Intelligence, Books I, II, and III, Final Report of the Select Committee to Study Governmental Operations with respect to Intelligence Activities, 94th Cong., 2d Sess.

finds -- and should not be forbidden.* Secondly, the Committee concludes that it is improper for academics to have a confidential relationship with CIA -- although some of us dispute that conclusion; and thirdly, I believe the Committee "imports a cat" by suggesting some wrongdoing that just wasn't there to begin with. Whatever the accuracy of the Church Committee's report of facts, we can't easily ignore their challenge: namely, that "it is primarily the responsibility of the American academic community to set the professional and ethical standards of its members."**

We should, I believe, bear two points in mind as we respond. First, the issue is what now? What standards should we follow hereafter, not simply whether or not CIA violated its mandates in the past. Second, if we establish standards they should be neutral. Professional guidelines and standards that are dependent upon whether or not an individual happens to agree with the present or past foreign policies of the United States are neither helpful, nor are they standards.

* S. Rept. 94-755, Book I, pp. 189, 191.

** S. Rept. 94-755, Book I, p. 191.

Of course, we can't ignore the past -- but we don't necessarily have to reach the same conclusions as the Church Committee, or as our distinguished President, Bill Van Alstyne. Bill's most recent letter to George Bush* focuses upon three allegations of CIA wrongdoing; failure to disclose CIA "sponsorship;" CIA contracts with scholars for the publication of "propaganda;" alleged "operational" use of academics by CIA.

As to the first point, the critical issue, Bill says, is that the reader of a journal should take into account whether a publication is written by someone "sponsored" by CIA. One cannot quarrel with a practice that requires a writer to acknowledge his employer's identity, but it is more difficult to fix the writer's responsibility for noting other associations.

* Letter of 24 May 1976, Van Alstyne to Bush, AAUP Chapter Conference Newsletter, 26 May 1976. The first letter from Van Alstyne to Bush is in Chronicle of Higher Education, 17 May 1976, p. 8.

Perhaps we could agree on a definition of "sponsorship" for purposes of deciding how to footnote an investigator's article. I don't think it would be helpful, however, because many personal associations influence one's approach and it's manifestly impossible to list them all. Our association with the AAUP is surely open, but should those who write on constitutional law always and invariably list their membership, and degree of affiliation in a footnote? When someone writes about the abortion case, should church affiliation, if any, or lack of it, be footnoted? That association may be more relevant to the author's conclusions than attendance at Yale. Or, if one writes about the proper balance between the powers of the President and those of Congress, should the current political affiliation of the author be revealed? What should the rules be, or should we have any at all? The answers are not self-evident.

I agree, however, that knowing the sponsorship of a document helps the reader. Look, for example, at the Church Committee's report which is contained in an awesome trilogy of books dribbled out to the

pages in three volumes. Let us remember what we learned during the 1950's about Committee reports. They do not, however revealing, establish facts. Indeed, that is not their primary function. The fundamental purpose of a Committee Report is to further legislative purposes by gathering and distributing legislative findings. Witnesses are carefully selected and screened. They are not, ^{as are only} cross-examined -- the proceedings are often televised and are more inquisitorial than adversary. The Church Committee's procedures seemed fairer to me than those of the Pike Committee, but still the result was one-sided. The targets of a report may, or may not, be allowed the courtesy of seeing a draft. The Church Committee's staff did give the executive branch opportunities to comment, and object to parts; and the Committee did delete some material, and condense parts.

Bill, properly, asks us to evaluate material in the light of its sponsors. The Church Committee report should also be evaluated in the light of its sponsors -- who are legislators, not administrators; who are not charged with executive responsibility; and who are not obliged in their daily work to deal

with foreign allies or adversaries. Some may find it relevant that its chairman had apparently decided to become a candidate for President. Moreover, the report is almost entirely the product of its staff -- bright, mainly young, people whose conscience had been seared by their feelings about Vietnam, and probably Chile, but who were uninformed, if not uncontaminated, by knowledge of how academics have historically contributed to foreign intelligence gathering. Notably lacking in the report is a sense of history, and of balance. The general outline of the contributions of British academics to their nation's intelligence organizations is well-known.* The work, usually quite confidential, of Oxford and Cambridge dons for their intelligence services is unheralded, unremarkable, but doubtless invaluable.

Most will assume that an academic is not justified in lying about a relationship with CIA. Maybe, but the question of disclosure of an association is very complicated. I do know of situations

* Generally, see material in Brown, A Bodyguard of Lies (1975); Winterbottom, The Ultra-Secret; Kahn, The Codebreakers; Stevenson, A Man Called Intrepid.

tion, may be arguably justifiable for a professional. Lawyers still argue whether or not it is improper to give legal advice which will very likely tempt the client to commit perjury, or place a witness on the stand who will probably tell a lie.* Dean Freedman shows that the answer is by no means certain, and that to even suggest propriety risks disbarment. Should a doctor, invariably, reveal his diagnosis to his patient? Perhaps the information will be additionally harmful. I can't condemn, without facts, a physician who "lies" to his patient, nor am I wholly clear that a professor should always, under any conceivable set of circumstances, tell the whole truth and nothing but the truth. I happily refrain, however tempted, from describing some of my students as dopes. Is it unethical for someone studying the possible toxic effects of microwave radiation loosed by the Russians to seek information from reputable academic scientists on the ground that he's about to purchase a microwave oven? H.H. Monro, generally known as

* See Freedman, "Professional Responsibility of the Criminal Defense Lawyer," 64 Mich. L. Rev. 1469 (1966).

cat, Tobermory, who always told the truth. That cat lead a wretched -- and short -- life. In a large sense, deception is part of the game of nations. Individuals are inevitable participants, and philosophers dispute whether the rules of ethical behavior applicable to individuals can apply in the international arena.

The second of the Van Alstyne complaints is that CIA contracts "with scholars for publication to be used as 'propaganda' which nonetheless appears to be professionally detached and reliable scholarly publication."

The third complaint concerns allegations that CIA makes "operational use" of academics in a "covert" fashion.

The Director of Central Intelligence takes issue with the thrust of all these allegations in a letter of May 11th. "None of the relationships [with CIA]," says Mr. Bush, "are intended to influence what is taught or any other aspect of a scholar's work. We specifically do not try to inhibit the 'free search for truth and its free exposition.'"*

* Letter of 11 May 1976, AAUP Chapter Conference Newsletter, 26 May 1976, pp. 2-3.

Neither Bill, nor the Committee, seem to find this assurance comforting. Bill asks for a blanket assurance from the Agency that it will not employ any academics for "covert" operations.

Central to the Church Committee's report is its distinction between open and clandestine relations. Broadly, the Committee believes that the independence and integrity of an educational program are endangered per se by secret relationships. I'm not sure why. If, for example, a local real estate dealer hired a business school professor to study the feasibility of a shopping center on a particular piece of land, should the identity of the undisclosed principle make an ethical difference to the academic? Woolworth, Penney, Sears, CIA, or an Arab prince? Would it make an ethical difference if the dealer's real objective were a factory, or some other use? The problem of when a confidential relationship is in the public interest deserves deeper thought than the Committee gives it.

Parenthetically, I emphasize that all contacts between the Department of State's intelligence branch and the academic community are open -- the Department wants it that way. Funding sources are always disclosed, and a consultant or contractor

with the Department is not deceived. I made inquiries about this and was firmly urged to emphasize the openness with which the Department proceeds. Ordinarily, if time allows, requests for bids are advertised, but the Department also invites those with research ideas to submit them. Its budget is small, unfortunately, but the Department's interests are so wide ranged that I urge anyone with foreign policy, or foreign area interests, to consider approaching the Department for support.

Surely there is a valid distinction between performing research and being "operational" -- the edges are clear but the line between them is not sharp nor self-defining. Perhaps the Committee realized this in admitting that "it does not recommend a legislative prohibition on the operational exploitation of individuals in private institutions by the intelligence agencies. The Committee views such legislation as both unenforceable and in itself an intrusion on the privacy and integrity of the American academic community."* The Committee, therefore, does not resolve the appropriateness of

* p. 191.

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an individual academic's decision to offer assistance to the CIA, or another intelligence agency, voluntarily without disclosing his offer to the public generally, or to his dean or a department specifically.

The Committee does recommend, without giving its reasons, that the CIA's internal directives "require that individual academics used for operational purposes by the CIA, together with the President or equivalent official of the relevant academic institution, be informed of the clandestine CIA relationship." I find this provision curious and also raising questions of academic independence. Should a professor who agrees during his summer "vacation" to write a report on the geology of Central Asia for the CIA be obliged to tell the President of the university of his "employer," his travels, and about his work? Ordinarily Presidents and Chancellors are not concerned with such specifics. We generally applaud an administration that leaves us alone and sees that the budget is balanced and classes are taught; nor can we properly object if we're asked to give a full day's work for a day's pay. Should universities issue rulings limiting, or regulating, the contacts of academics with the CIA? Of course, some institutions

decide not to undertake classified research -- that's a different problem, but a blanket rule would raise serious questions of impairing free association.

The Committee's uncertainty about recommending legislation may partly be attributed to some doubt as to whether or not it is a federal function to set ethical and professional standards. Is Congress authorized to tell us when we may not decide to have a confidential relationship with the government? Furthermore, can we assuredly say it is never in the government's interests to employ confidential agents? Presidents of the United States have repeatedly employed secret agents, and the Supreme Court one hundred years ago upheld their employment without statutory authorization as constitutional.*

The Church Committee's discussion of the constitutional problem of regulating intelligence gathering was pitifully weak. The extent to which Congress has constitutional authority to control

* Parenthetically, at least two members of the Supreme Court have had professional experience in intelligence work; Justices Powell and Stevens.

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of the product is not clear. Foreign intelligence is primarily an executive department need, flowing from particular responsibilities in foreign affairs and in national defense. Several Supreme Court cases support arguments that Congressional power both to control the means and to obtain the information here is limited (Totten, Curtiss-Wright, C & S Airlines).* Federalist Paper #64 alludes to foreign intelligence, states that the President may obtain it, and decline to furnish it to Congress. Furthermore, international law may limit the means employed. None of these legal questions are adequately addressed by the Church Committee report -- I found its law discussion short, incomplete, and misleading. Furthermore, the Church Committee did not cover the rich historical literature revealing state practices. These are relevant, if not decisive, in determining what international law requires.

* Totten v. U.S., 92 U.S. 105 (1876); U.S. v. Curtiss-Wright, 299 U.S. 304 (1936); Chicago and Southern Airlines v. Waterman S.S. Corp., 333 U.S. 103 (1948).

adequately understand that confidential relationships may be in the public interest. We are generally agreed that some confidential relationships should be fostered by both the legal order and by professional/ethical standards. These include communications between husband/wife, priest/penitent, and doctor/patient. Legislators now hear requests that we create other confidential relationships; newspaper reporter/informant, for example. Recently some members of Congress expressed an interest in supporting the confidentiality of information supplied to the government by Indians. The Church Committee, however, has some misgivings about confidentiality as it involves intelligence gathering and the Committee casts doubt upon the propriety of an individual's decision to assist covertly the government agency charged by the Congress and by the President with the duty of obtaining the best possible foreign intelligence.

The CIA's involvement with academic institutions was listed in the Church Committee under four categories, in which academics:

1. Provide leads and make introductions for intelligence purposes;
2. Collect intelligence abroad;
3. Conduct research and training which may be financed, overtly or covertly, by CIA; and
4. Are funded directly or indirectly by CIA.

As to each of these four, the Committee commented briefly.

First, the material relating to how academics provide leads and make introductions for intelligence purposes was substantially abridged in the report -- at the request of the executive branch. The primary reason was not so much to hide something about which the agencies are ashamed, but to protect methods and sources, and the privacy of individuals and institutions. I've not seen any suggestion whatsoever that any of the leads and introductions violated state or federal law.

Some of the questions raised here involve matters of propriety and fairness more than questions of legality. First and foremost, we have ethical obligations toward our students, and even

if the law requires us to speak, most of us would be uncomfortable if required to disclose a confidence entrusted to us by a student. Furthermore, we surely feel that we should not place one of our students in an embarrassing position.

We enter here a sensitive area in which the questions are so difficult that we may be unable to make firm rules. Some of our foreign students have become, or will become, important political figures at home. Should we assist our own foreign policy makers who deal with them? What are the limits to that assistance? If one of our foreign visitors has a particularly unhappy, or striking, experience here, should that information be passed on. Of course, all students have rights to their privacy, but all Americans share a common interest in dealing fairly, intelligently, and effectively with foreign leaders.

The Church Committee does mention extensive Soviet intelligence and espionage activity directed against the United States. Other countries also maintain agents here. The Committee notes that foreign visitors to the U.S. include intelligence agents, secret police, and others in whom we have

ourselves. Statistically, we can predict that foreign agents are among our students; perhaps their duties include reporting on their fellow-students. What should we do? Finding the balance between improper intrusions into the lives of our inhabitants, and protecting ourselves and our wards from improper foreign activity is difficult, but it is a practical problem.

With respect to academics collecting intelligence abroad, the Church Committee called attention to various CIA directives forbidding the operational use of anyone lecturing or studying abroad under a grant from the Board of Foreign Scholarships which administer the Fulbright-Hayes program. I can testify, as a recipient of two such grants, that I was never approached by any U.S. intelligence organization to give them my thoughts and opinions. Indeed, I felt neglected in 1967 after our family hurriedly left Egypt that I was only asked to report to our local Rotary Club. The Committee saw no danger in "debriefing" travelers, or consulting with academics about their observations while abroad.

Furthermore, under the existing rules, grantees under Ford, Rockefeller, and Carnegie programs may not be used operationally, nor may persons employed by these foundations be used. The Church Committee, however, did urge that the prohibition apply to others who were funded under other U.S.-sponsored programs. The rationale for this suggestion was fiscal, rather than ethical. For the CIA to use persons who were funded by Congress for non-intelligence purposes was misleading Congress. Misleading Congress may be foolish, but it is not necessarily illegal or unethical.

The Church Committee's confusion of congressional and ethical issues is understandable, I suppose -- but not forgiveable. I cannot fault the Committee, however, for challenging us to reconcile our obligations as citizens, with our responsibilities as academics searching for truth. An accommodation is more difficult for us than for many of our colleagues abroad, because our country is large, powerful, and envied. Others do not necessarily wish us well, but we must deal with other nations regularly,

and, to the maximum extent possible, with knowledge of their interests and intentions, if we wish, ourselves, to be effective. In the long run whether or not we enjoy academic freedom depends upon our ability to defend its principles, not merely against our own government, but against our adversaries abroad. We do a rather good job defending ourselves from our own government, but, if the Church Committee's recommendations are taken literally, will do a much poorer job defending ourselves abroad.